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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,944	04/02/2004	Thomas E. Ricciardelli	42186	8910

1609 7590 10/22/2007
ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P.
1300 19TH STREET, N.W.
SUITE 600
WASHINGTON,, DC 20036

EXAMINER

THOMPSON, CAMIE S

ART UNIT	PAPER NUMBER
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1794

MAIL DATE	DELIVERY MODE
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10/22/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/815,944

Applicant(s)

RICCIARDELLI ET AL.

Examiner

Camie S. Thompson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment filed July 19, 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendment and accompanying remarks filed July 19, 2007 are acknowledged.
2. The rejection of claims 49-58 under 35 U.S.C. 102(e) as being anticipated by Desai et al., U.S. Pre Grant Publication 2002/0025414 is withdrawn due to applicant's argument.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 34-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Desai et al., U.S. Pre Grant Publication 2002/0025414.

Desai discloses a material that contains up to 100% recycled material (see paragraph 0006).

Additionally, the reference discloses that the recycled material contains at least one type of thermoplastic material and that the recycled material is obtained from post-consumer products such as waste carpet (see paragraph 0024). Paragraph 0025 of the reference discloses that the backing material is a thermoplastic material and can be polyvinyl chloride and have polyethyelene. Desai also discloses that an alkyl phthalate plasticizer (Santicizer Registered™ 160) is present in the matrix/backing material (see paragraph 0026). It is disclosed in paragraph 0032 that the waste carpet is cut up to form pieces with a length of 1/4" to 1/2". Also, it is

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disclosed in paragraph 0035 that the recycled matrix also comprises face fibers such a polyester fibers dispersed therein. Paragraph 0036 of the Desai reference discloses that the recycled material can be used in any combination with virgin thermoplastic material such as from about 1% weight recycled material to about 100% recycled material alone with about 0% virgin material to about 100% virgin material.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 49-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Desai et al., U.S. Pre Grant Publication 2002/0025414 in view of Young et al., U.S. Patent Number 5,895,071.

Desai discloses a material that contains up to 100% recycled material (see paragraph 0006). Additionally, the reference discloses that the recycled material contains at least one type of thermoplastic material and that the recycled material is obtained from post-consumer products such as waste carpet (see paragraph 0024). Paragraph 0025 of the reference discloses that the backing material is a thermoplastic material and can be polyvinyl chloride and have polyethylen. Desai also discloses that an alkyl phthalate plasticizer (Santicizer Registered™ 160) is present in the matrix/backing material (see paragraph 0026). It is disclosed in paragraph 0032 that the waste carpet is cut up to form pieces with a length of 1/4" to 1/2". Also, it is disclosed in paragraph 0035 that the recycled matrix also comprises face fibers such a polyester

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fibers dispersed therein. Paragraph 0036 of the Desai reference discloses that the recycled material can be used in any combination with virgin thermoplastic material such as from about 1% weight recycled material to about 100% recycled material alone with about 0% virgin material to about 100% virgin material. Desai does not disclose that the waste carpeting is fed into an extruder. Young discloses a polymeric blend formed from recycle carpet scrap. It is disclosed in Young that the waste carpet scrap can be fed into an extruder and heated to about 204 degrees in order to melt the carpet blend into a polymeric material. Therefore, it would have been obvious to one of ordinary skill in the art have the Desai reference feed the waste scrap carpet and the second polymer into an extruder and heat the resulting mixture in order to have a polymeric material that is free from thermal degradation.

Response to Arguments

7. Applicant's arguments filed July 19, 2007 have been fully considered but they are not persuasive. Applicant argues the effective filing date of the Desai reference. The provisional of the Desai reference has been reviewed and support was found for the cited teachings. The filing date of the Desai reference is accorded the filed date of the provisional. Applicant argues that the Desai reference does not disclose that the matrix comprises 10 to 75% waste scrap carpeting and about 25 to 90% of second polymer. It is disclosed in column 5, lines 43-68 of the Desai reference that the recycled material comprises at least one thermoplastic material, at least one plasticizer, at least one inorganic filler, at least one stabilizer and face fibers. Desai also

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discloses that the material can be made from any combination of recycled material and virgin material (second polymer) wherein the mixture can comprises about 1% to 100% by weight recycled material along with 0% to 99% by weight virgin material (second thermoplastic material). Desai discloses that the preferred recycled thermoplastic material is polyvinyl chloride. Table 1 of the reference discloses the use of 60 PHR of filler. Applicant argues that the Desai reference does not disclose the use of polyvinyl chloride plasticizer. It is disclosed in column 3, lines 31-57 that the thermoplastic material comprises a vinylchloride plasticizer. Applicant also discloses that the matrix of Desai does not comprise polyethylene copolymer. It is disclosed in column 3 of the Desai reference that the thermoplastic material can comprise copolymers and mixtures of polyethylene chloride. Applicant argues that the Desai reference does not disclose that the components are not in a substantially continuous phase. Desai discloses that the material is fused, which is in a continuous phase. Additionally, paragraph 0036-0038 of the reference discloses that the waste carpet scrap and the second polymer form a continuous layer.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Camie S. Thompson whose telephone number is (571) 272-1530. The examiner can normally be reached on Monday through Friday from 7:30 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached at (571) 272-1398. The fax phone number for the Group is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Milton I. Cano', with a stylized, flowing script.

MILTON I. CANO
SUPERVISORY PATENT EXAMINER